

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

MDL No. 13-2419-RWZ

This Document Relates To:

All Actions

ORDER ON MOTION FOR COURT ORDER COMPELLING THE UNITED STATES GOVERNMENT TO DISCLOSE PORTIONS OF GRAND JURY TESTIMONY

[Docket No. 2362]

October 29, 2015

Boal, M.J.

Defendants Abdul R. Barakat, M.D. and Ocean State Pain Management, P.C. seek transcripts of grand jury testimony in the parallel criminal case, United States v. Barry J. Cadden, et al., No. 14-cr-10363-RGS (D. Mass.). Docket No. 2362. The Supreme Court’s decision in Douglas Oil Co. of California v. Petrol Stops Northwest, 441 U.S. 211 (1979), instructs that when grand jury materials are sought, be it from the Court, the government, or a private party who might have received it, two evaluations have to be made. The first is to discern the public interest in grand jury secrecy on the facts of the particular case appertaining at the time the request is made. Douglas Oil, 441 U.S. at 222. The second is to determine whether parties seeking disclosure have shown that “the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.” Id. Such a showing must be made “even when the grand jury whose transcripts are sought has concluded its operations” because the courts must consider “not only the immediate effects upon a particular

grand jury, but also the possible effect upon the functioning of future grand juries.” Id. “[T]he court’s duty . . . is to weigh carefully the competing interests in light of the relevant circumstances . . .” Id. at 223.

The moving defendants cite to the government’s previously filed Motion to Intervene and for a Stay of Certain Depositions (Docket No. 2209) for the likely reasons the government will put forth in opposition to this motion. Docket No. 2364 at 10-11. The Court has carefully considered the moving defendants’ memorandum of law as well as the government’s likely response based on its prior filing. After applying the Douglas Oil test, the Court denies the motion.

So Ordered.

/s/ Jennifer C. Boal
JENNIFER C. BOAL
United States Magistrate Judge